IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 80 of 2005
In
SPECIAL CIVIL APPLICATION No. 10041 of 1994
with
CIVIL APPLICATION No. 512 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EUPHORIC PHARMACEUTICALS - Appellant(s)

Versus

ATUL U. MEHTA & 1 - Defendant(s)

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Appearance :

MR KM PATEL for Petitioner No(s).: 1.

MR AK CLERK for Respondent No(s).: 1.

None for Respondent No(s).: 2.

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CORAM :HONOURABLE MR.JUSTICE R.S.GARG
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date : 15/07/2005

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Parties are finally heard.

2. Present is an appeal by a dissatisfied employer against the judgment and order dated 22.12.2004, passed by the learned Single Judge in Special Civil Application No. 10041 of 1994, whereunder the learned Single Judge set aside the award dated 1.6.1994 made by by the learned Labour Court, Bharuch in Reference (LCV) No. 167 of 1990 and Reference (LCV) No. 285 of 1987.

3. The submissions of the workmen before the Labour Court were that they were the victims and their removal was prima facie illegal. It was brought to the notice of the Labour Court that on one side, the respondents-workmen were removed from the services on the ground of non-availability of the work and reduction of the post and at the same time, the employer was employing more labourers through the agency of the contractor. Various other issues were also raised. However, after hearing the parties, the learned Labour Court did not

agree with the submissions made by the workmen and accordingly rejected the References. Being aggrieved by the said rejection, the workmen came to this Court in Special Civil Application. The learned Single Judge allowed the petition and awarded 50% back wages to each of the employee, therefore the employer is in appeal before us.

4. The submission of Mr. Patel, learned counsel for the appellant is that under Article 226 or even under Article 227 of the Constitution of India, the learned Single Judge was not entitled to upset or disturb the findings of facts which, even otherwise, could be supported on the strength of the facts available on the record. His further submission was that the learned Single Judge was unjustified in observing that the work had not reduced and the workmen were retrenched in contravention of Section 25F of the Industrial Disputes Act, 1947.

5. Learned counsel for the respondent-workmen, on the other hand, submitted that the learned Single Judge did not reappreciate the evidence, but found that the approach of the learned Labour Court was patently illegal and the findings recorded by him were based upon mis-appreciation of evidence and even otherwise, evidence which could have a bearing on the facts, had not been examined. His submission is that the learned Single Judge was absolutely justified in recording findings in accordance with the evidence available on the

records.

6. We have gone through the findings recorded by the learned Single Judge. The finding was that, the stand of the employer that the workmen were retrenched because of reduction of the post and the work and they were offered the compensation on 4th and 5th being Sunday, the amount was sent under money order on 6th, was incorrect. The learned Single Judge found that the fact that the amount was sent and its receipt was refused was not established. The learned Single Judge also found that on one side, the workmen were being removed on the ground of non-availability of work and reduction of the post, while at the same time, more labour was employed through the agency of the contractor. The learned Single Judge has found that the work did not reduce. If that is the finding based upon the evidence, then, we must observe that the learned Labour Court, in fact, did not consider the evidence and ignored the material pieces of evidence which could have a positive bearing on the case of the appellants-workmen. Even otherwise, we find no reason to interfere with the findings recorded by the learned Single Judge on the merits relating to reinstatement. The appeal is dismissed.

7. So far as the question of back wages is concerned, it appears from the order made by the learned Single Judge that a joint submission was

made before him that the matter be remitted to the learned Labour Court for giving appropriate opportunity to the parties to lead evidence in support of their submission that to what extent, back wages would be paid to the concerned workmen.

8. Even at this stage before us, the parties have agreed that to this limited extent the matter can be remitted to the learned Labour Court.

9. Taking into consideration the joint submission made by the parties, we set aside the direction made by the learned Single Judge regarding payment of 50% back wages and instead, remand the matter back to the learned Labour Court with a direction that after giving due opportunity of hearing to the parties to lead evidence, it shall decide the question of workmen's entitlement to the back wages. The parties shall appear before the Labour Court on 16th August, 2005 and within a period of six months from the date of appearance of the parties, the learned Labour Court shall decide the question of entitlement. The appeal to the extent indicated above, is allowed. No costs. Consequently, Civil Application stands disposed of. It is however directed that in view of the judgment of the learned Single Judge, the appellants are obliged to reinstate the workmen and pay their wages to them from the date of the judgment of the learned Single Judge. This should be done by the establishment/employer latest by 16th August,

2005.

(R.S. GARG, J.)

(RAVI R. TRIPATHI, J.)

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